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MODEL CRIMINAL LAW PROVISIONS FOR THE PROSECUTION OF COMPETITION MANIPULATION

UNODC IOC BOOKLET FOR LEGISLATORS



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Foreword

The manipulation of sports competitions, in particular when linked to betting activities, has become an area of great concern in recent years. Like doping, it threatens the very integrity of sport. Often, it also has links to other criminal activities such as corruption, organized crime and money-laundering.

In such cases, the investigation capacities of sports organizations, as well as the sanctions available to them, such as bans, relegations and penalties, are no longer sufficient and must be complemented with a criminal justice response. Legislation to establish criminal offences against competition manipulation is therefore needed alongside independent sports sanctioning systems.


The International Olympic Committee (IOC), as the guardian in charge of preserving the integrity of the Olympic Games, and the United Nations Office on Drugs and Crime (UNODC), as the global leader in the fight against corruption and crime, and guardian of related United Nations conventions, have joined forces to protect clean athletes.

In 2013, the IOC and UNODC published a joint study which compiled criminal law provisions on match-fixing and illegal betting from existing legislation of 19 countries. It identified discrepancies and similarities in legislative approaches. The document at hand uses this initial study and broadens its perspective by looking at specific legislation in 52 countries. This research reveals that during the last three years some national legislation has been further developed and more countries have adopted specific legislation aimed at criminalizing the manipulation of sports competitions.

This booklet puts forward for consideration Model Criminal Law Provisions aimed at assisting countries in establishing effective legislation to prosecute those involved in competition manipulation. The harmonization of criminal legislation is key for international law enforcement and judicial cooperation and will further facilitate convergence in criminal justice responses.

Our efforts in supporting national governments and other stakeholders involved in sports in cutting the Gordian knot that ties criminal activities with sports competitions is an ongoing process. At the same time, UNODC and the IOC, as well as other major sports organizations, are stepping up efforts to support the prevention, monitoring, assessment and investigation of any unethical activity related to sports competitions.

It is this coordinated approach, at the international and national levels, that is key to protecting the integrity of sport, its values and athletes.



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Terminology

The terms “match-fixing” and “competition fixing” have been used by a number of different institutions,¹ as well as at the EU level.² National regulations use a variety of different terms, including “sporting fraud” (e.g. India), “corruption of players” (e.g. Malta), “bribery in sporting contests” (e.g. United States) or “corrupt activities relating to sporting events” (e.g. South Africa).

The Council of Europe’s Convention against the Manipulation of Sports Competitions (also known as the Macolin Convention) uses the term “manipulation of sports competitions”. This terminology is also used by a number of international sports organizations, including the IOC which adopted in 2015 the Olympic Movement Code on the Prevention of the Manipulation of Competitions.

In this booklet, the terms “manipulation of sports competitions” and “match-fixing” are used interchangeably, except when otherwise indicated.

¹ KEA Report, Match-fixing in sport – A mapping of criminal law provisions in EU 27 (2012); IOC-UNODC Study, Criminalization approaches to combat match-fixing and illegal/irregular betting (2013); TMC Asser Institute Report, The Odds of Match Fixing – Facts & Figures on the Integrity Risk of Certain Sports Bets (2015).

² http://ec.europa.eu/sport/policy/organisation_of_sport/match_fixing_en.htm

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Introduction

Match-fixing is one of the most significant threats to the integrity of sport. It eliminates the unpredictability of the game which is the inherent feature of fairness in a competition. In addition, it also destroys the core social, cultural and educational values of sports, as well as undermining its economic role.

An effective fight against match-fixing requires governmental action and coordination with sports organizations, especially in the field of criminal law. Multiple initiatives have been launched and developed as the problem has received more attention. Indeed, the realization that a significant proportion of the illicit and illegal profits made from the manipulation of sports competitions involves an international dimension has led States, the IOC and UNODC, and other organizations such as the Council of Europe and the European Union, to look at using existing international frameworks, as well as developing new mechanisms, in order to support efforts to counter this problem.

The United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime form the international legal framework to support efforts of governments and sports organizations in the fight against competition manipulation. In particular, the relevance of the Convention against Corruption was underlined by States parties as an effective mechanism for promoting good governance in sport and mitigating the risk of corruption that sport faces globally, who further acknowledged the work done by UNODC and IOC in this regard.³ Added to this is the Council of Europe's sport-specific international agreement, the "Macolin Convention".

³ Paragraph 7 of Resolution 6/6, "Follow-up to the Marrakech declaration on the prevention of corruption", of the Report of the Conference of the States Parties to the United Nations Convention against Corruption on its sixth session, held in St. Petersburg from 2 to 6 November 2015, p.21, available at: www.unodc.org/documents/treaties/UNCAC/COSP/session6/Report_COSP_VI_advance_copy.pdf

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Objectives of this Booklet

This booklet represents a follow-up to the IOC-UNODC document entitled *Criminalization approaches to combat match-fixing and illegal/irregular betting* (hereinafter, the “IOC-UNODC Study (2013)”) and seeks to implement the IOC International Forum on Sports Integrity Recommendations of April 2015.⁴

Based on an extensive legal analysis of 52 national jurisdictions which incriminate match-fixing, the booklet has the following objectives:

- To develop a check-list of “good-practice” elements identified in the above-mentioned legislation;
- To propose Model Criminal Law Provisions and additional guidelines for consideration by national legislators seeking to introduce legislative measures to combat competition manipulation.

These objectives are based on two premises: firstly, that the most effective way to deter match-fixing is by establishing national laws to *criminalize* such activity; and secondly, that establishing a *specific* criminal offence concerning the manipulation of sports competitions may be more effective than relying on general criminal law provisions. Indeed, research has shown that the enactment of specific criminal offences is more effective than relying on the general provisions incriminating fraud, bribery, cheating, corruption or deception.⁵ Furthermore, such provisions may reinforce the educational and prevention aspects related to match-fixing by making it clear that cheating in a sports competition can *per se* qualify as a criminal offence.⁶ It should also be noted that a broad range of different institutional stakeholders have requested the enactment of a *specific* criminal offence for match-fixing.⁷

⁴ www.olympic.org/Documents/Commissions_PDFfiles/Ethics/IFSI_Recommendation_3_Regulation_and_Legislation_fr.pdf

⁵ Haberfeld, M.R., Sheehan, Dale (Eds.), *Match-Fixing in International Sports – Existing Processes, Law Enforcement, and Prevention Strategies*, Springer 2013, pp.202, 279.

⁶ Haberfeld, M.R., Sheehan, Dale (Eds.), *Match-Fixing in International Sports – Existing Processes, Law Enforcement, and Prevention Strategies*, Springer 2013, p.202.

⁷ Notably the IOC, UNODC, FIFA, UEFA, the European Parliament, etc. See KEA Report (2012), p. 16.

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Results of the Legal Analysis

Examples of cases involving match-fixing show that, due to the complexity of the crime, it is necessary to employ appropriate tools, such as police expertise, telephone interceptions, formal police interviews, prosecutions and trials.⁸ For example, during operation “Veto” conducted by Europol,⁹ a total of 425 officials, players and other participants of a sophisticated organized crime network from more than 15 countries were suspected of being involved in the manipulation of more than 380 professional football matches across Africa, Asia, Europe, South and Central America.¹⁰ The activities generated over €8 million in betting profits and involved over €2 million in corrupt payments to those involved in the matches.¹¹

Such cases underline the international nature of match-fixing and the need for effective coordination at the national and international levels between law enforcement bodies and sports organizations. In terms of match-fixing, examples exist of police and public prosecutors co-operating with sports organizations in relation to criminal cases without prejudicing the sanctioning systems¹² used in sport.

The national laws analyzed as part of the development of this booklet contain general criminal offences, such as corruption, bribery, fraud, deception, use of insider information, money laundering, organized crime, etc. However gaps exist which allow offenders to avoid the most severe consequences of their deeds. For example, the absence of a *specific* crime for match-fixing was the main reason preventing three Swiss players from being convicted in 2009 in the context of a match-fixing scandal which was part of the “Bochum” file.¹³ In its judgement of 13 November 2012, the Swiss Federal Criminal Court acquitted the defendants and stated that Swiss criminal laws in force at that time were unsuitable to allow their conviction.¹⁴ It is worth noting that Switzerland recently modified its legislation by enacting a new criminal offence for match-fixing.¹⁵

⁸ KEA report (2012), p. 16.

⁹ See www.europol.europa.eu/content/results-largest-football-match-fixing-investigation-europe

¹⁰ See www.europol.europa.eu/content/results-largest-football-match-fixing-investigation-europe

¹¹ See also Carpenter, K., Match-Fixing – The Biggest Threat to Sport in the 21st century?, available at: www.lawinsport.com/articles/anti-corruption/item/match-fixing-the-biggest-threat-to-sport-in-the-21st-century-part-1

¹² KEA report (2012), p. 16.

¹³ www.dw.com/en/europes-largest-match-fixing-trial-opens-in-bochum/a-6082391

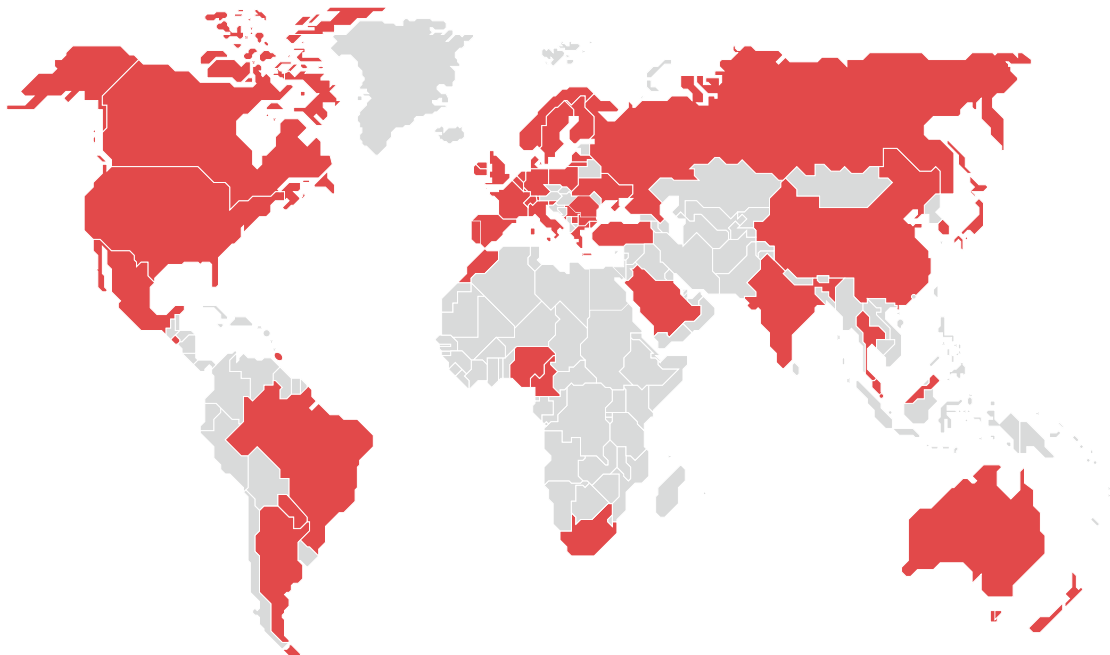
¹⁴ Swiss Federal Criminal Court, judgement SK.2011.33: http://bstger.weblaw.ch/pdf/20121113_SK_2011_33.pdf

¹⁵ Text available at: www.bj.admin.ch/dam/data/bj/wirtschaft/gesetzgebung/geldspielinitiative/entw-f.pdf

The IOC-UNODC Study (2013), reviewed legislation from 19 jurisdictions: Argentina, Australia, Brazil, Canada, China (including the special administrative region of Hong Kong), Japan, Malaysia, New Zealand, Nigeria, Qatar, the Republic of Korea, the Russian Federation, the Republic of South Africa, Thailand, Trinidad and Tobago, Ukraine, the United Arab Emirates and the United States of America).

Building on the above, this booklet reviewed national legislation of 52 States: Argentina, Australia, Belgium, Brazil, Bulgaria, Cameroon, Canada, People's Republic of China including the special administrative region of Hong Kong, Denmark, Finland, France, Germany, Greece, India, Ireland, Italy, Japan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Morocco, Mexico, the Netherlands, New Zealand, Nigeria, Norway, Paraguay, Poland, Portugal, Qatar, Romania, the Russian Federation, the Kingdom of Saudi Arabia, Serbia, Singapore, Slovenia, the Republic of South Africa, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, and the United States of America.

National jurisdictions analysed in this study

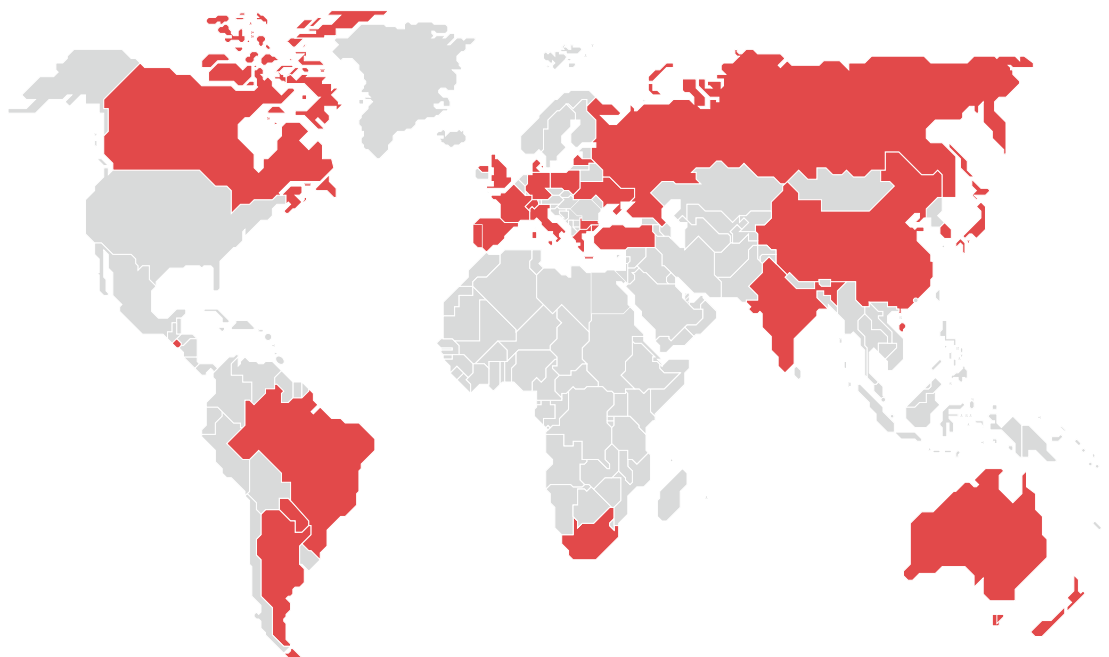


The choice of these 52 jurisdictions was based on the following:

Firstly, for consistency, the 19 jurisdictions covered by the UNODC-IOC Study (2013) were included. While that study revealed that only 5 States had established specific or ad hoc criminal offences for match-fixing, a number of these have, in the meantime, amended or reviewed relevant legislation. Secondly, the review included the 16 countries (at the time of writing) which had signed and/or ratified the Macolin Convention.¹⁶ These countries are: Bulgaria, Denmark, Finland, France, Germany, Greece, Italy, Lithuania, Luxemburg, the Netherlands, Norway, Poland, Portugal, Serbia, Spain, and Switzerland. Finally, the legislation of 17 other States was also reviewed namely: Belgium, Cameroon, El Salvador, India, Ireland, Latvia, Malta, Morocco, Mexico, Paraguay, Romania, Saudi Arabia, Singapore, Slovenia, Sweden, Turkey and the United Kingdom.

The results show that 25 of the 52 jurisdictions examined have adopted or enacted specific legislation criminalizing the manipulation of sports competitions: Argentina, Australia, Brazil, Bulgaria, People's Republic of China, Denmark, El Salvador, France, Greece, Italy, Japan, the Republic of Korea, Latvia, Malta, New Zealand, Poland, Portugal, the Russian Federation, the Republic of South Africa, Spain, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States of America. At the time writing, three States, namely Germany, India, and Paraguay, have initiated the adoption of specific provisions related to match-fixing. In total, therefore, 28 countries have either proposed, adopted or enacted specific legislation criminalizing match-fixing.

Jurisdictions with specific match-fixing offences (2016)



¹⁶ The updated list of countries which have ratified the Macolin Convention is available here: www.coe.int/en/web/conventions/full-list/-/conventions/treaty/215/signatures?p_auth=plWNm9bV. In this category, a very small number of countries, such as Iceland or Armenia, have not been included into the list, although they count among the signatories of the Macolin Convention. The main reasons for this choice are the absence of known issues concerning competition manipulation in these countries or the relatively small size of their respective markets.

4

Relevant Legal and Disciplinary Instruments

The United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime form the international legal basis with which match-fixing can be addressed.

The Convention against Corruption is the only legally binding universal anti-corruption instrument. The Convention, which has 178 States parties,¹⁷ requires countries to establish criminal and other offences to cover a wide range of acts of corruption.

Viewed through the articles of the Convention against Corruption, match-fixing can be linked to six criminal offences:¹⁸

- Active and passive bribery in the public sector;
- Active and passive trading in influence; and
- Active and passive bribery in the private sector.¹⁹

The second relevant international instrument is the United Nations Convention against Transnational Organized Crime.²⁰ This Convention is the main international instrument in the fight against transnational organized crime.²¹ It is based on the idea that if crime crosses borders, so too must the efforts of States to combat it. The Convention is further supplemented by three Protocols which target specific areas and manifestations of organized crime.²²

According to its article 3, this Convention applies to the prevention, investigation and prosecution of a) the offences established in accordance with articles 5,²³ 6,²⁴ 8²⁵ and 23²⁶ of this Convention; and b) any serious crime as defined in article 2 of this Convention;²⁷ where the offence is transnational in nature and involves an organized criminal group.²⁸

¹⁷ The updated list (including ratifications) is available at: www.unodc.org/unodc/fr/treaties/CAC/signatories.html

¹⁸ See also Jones, K., The Applicability of the “United Nations Convention against Corruption” to the Area of Sports Corruption (match-fixing), *International Sports Law Journal*, 2012 1-2, pp.57 et seq.

¹⁹ IOC-UNODC Study (2013), p. 279.

²⁰ www.unodc.org/unodc/en/treaties/CTOC/index.html (14/03/16).

²¹ The Convention opened for signature by UN Member States on 12-15 December, 2000 and entered into force on 29 September 2003.

²² The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

²³ Art. 5 deals with the criminalization of participation in an organized criminal group.

²⁴ Art. 6 deals with the criminalization of the laundering of proceeds of crime.

²⁵ Art. 8 deals with the criminalization of corruption.

²⁶ Art. 23 deals with the criminalization of obstruction of justice.

²⁷ Art. 2 b): “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.

²⁸ Art. 2 a) of the Convention defines an organized criminal group as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”.

In the area of sports, the provisions of this Convention are relevant when the manipulation of sports competitions involves transnational organized crime. However, “countries seem, at this stage, not to be able to fully utilize the potential and the added value of the UNTOC and the UNCAC to effectively combat match-fixing. The absence of several important elements of match-fixing from the scope of application of these Conventions might leave different offences unaddressed”.²⁹

This international framework has been strengthened with the Council of Europe’s Convention on the Manipulation of Sports Competitions, the Macolin Convention. It is open to signature and ratification for members of the Council of Europe, as well as to States which are not members of the Council of Europe.³⁰

In order to achieve its goals, the Convention seeks to involve relevant stakeholders in the fight against the manipulation of sports competitions, namely public authorities, sports organizations and sports betting operators.

It is worth reviewing the two different levels which sanctions can be applied for match-fixing offences. These are the *disciplinary sanctions*, applied by the sports bodies according to their internal disciplinary mechanisms and *sanctions* applied by public authorities. The latter may be civil, administrative/ disciplinary or criminal in nature.

National or international sports organizations adopt their own regulations and enforce them through their internal sanctions system. The justice bodies created by sport organizations are responsible for settling disputes, mediating and guaranteeing the correct interpretation of sporting rules and regulations.³¹

Indeed, initiatives put in place by sports organizations and betting operators in recent years are fundamental in the fight against match-fixing. These initiatives may take the form of an “intelligence system”; codes of ethics or conduct; integrity units, or educational programmes. FIFA³² and UEFA³³ were the first sporting bodies to establish early warning systems to detect betting related manipulation. In 2008, the International Tennis Federation (ITF), the Association of Tennis Professionals (WTP), the Women’s Tennis Association (WTA) and the Grand Slam Board, created a permanent Tennis Integrity Unit.³⁴ In 2009, the IOC launched its own surveillance system, the Integrity Betting Intelligence System (IBIS).³⁵ In addition to this intelligence system, the IOC’s Code of Ethics (articles 9 and 10) state that all forms of participation in, or support for betting related to the Olympic Games, and all forms of promotion of betting related to the Olympics, are prohibited. In 2015, the IOC also adopted the Olympic Movement Code on the Prevention of the Manipulation of Competitions which provides for harmonised regulations and minimum standards amongst the sports movement globally.³⁶

The Court of Arbitration for Sport has also made it clear that “disciplinary sanctions imposed by sports organisations are subject to civil law and *must clearly be distinguished from criminal penalties*”³⁷ although disciplinary and criminal sanctions may be complementary.³⁸ Provided that they are applied in line with legal constraints, the disciplinary powers of sports organizations constitute a fast and efficient coercive tool against the manipulation of sports competitions for those athletes and officials they regulate.

Outside of the internal matters of sports organizations, many States have sought to criminalize conduct related to match-fixing, i.e. the enactment of *criminal* sanctions for the different aspects related to match-fixing. The resort to criminal justice rests on the idea that competition manipulation is not only a breach of sports rules but also an offence to public order.

²⁹ IOC-UNODC Report (2013), p. 15.

³⁰ Explanatory Report to the Macolin Convention, point 17.

³¹ See Valloni L., Pachmann T., Sports Justice in Switzerland, European Sports Law and Policy Bulletin 1/2013, pp.600 et seq.

³² www.fr.fifa.com/aboutfifa/federation/releases/newsid=1040071.html

³³ www.fr.uefa.com/uefa/keytopics/kind=512/newsid=884732.html

³⁴ www.tennisintegrityunit.com/about-us/

³⁵ www.olympic.org/Documents/Commissions_PDFfiles/Ethics/General_Presentation_IBIS_FRENCH.pdf

³⁶ www.olympic.org/Documents/Commissions_PDFfiles/Ethics/olympic_movement_code_on_the_prevention_of_the_manipulation_of_competitions-2015-en.pdf

³⁷ CAS, award 2006/A/1102 par.52, emphasis added.

³⁸ See for example CAS award 98/200 AEK Athens and Slavia Prague v. UEFA of 20.08.1999.

5

Good Practices and Recommendations

Based on the analysis of the legislation of the 28 countries that had or were in the process of criminalizing match fixing, a check-list of four key good practices was identified. Outlined in more detail below, these are:

- The application of the match-fixing offences to all sports and competitions;
- Defining the offence of competition manipulation;
- The identification of the type of participants in the offence and;
- Clearly distinguishing match-fixing offences from betting offences.

A Application of the match-fixing offence to all sports and competitions

Given the importance of the threat represented by match-fixing and the inability to predict exactly which sports will be affected by match-fixing, a wide scope of application of this specific offence is preferable.

Indeed, experience has shown that criminals often choose less mediatized sports or competitions (second or third-league matches, friendly matches, sports that are less popular in certain countries, etc.) to conduct their activities in order to better avoid detection.

This proposal is also in line with the provisions of the UNCAC and of the Macolin Convention. The Convention against Corruption requires countries to establish criminal and other offences to cover a wide range of acts of corruption.³⁹ Moreover, according to the definition provided in article 3 of the Macolin Convention, “Sports competition” means “any sport event organized in accordance with the rules set by a sports organization listed by the Convention Follow-up Committee in accordance with article 31.2, and recognized by an international sports organization, or, where appropriate, another competent sports organization”.

³⁹ See also the Legislative Guide for the implementation of the UNCAC, 2006, available at: www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf

B Definition of competition manipulation

As a general remark, the definition of the manipulation of sports competition used in article 3.4 of the Macolin Convention is useful, as it has the merit of being negotiated and developed at the international level. The definition used is “*an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition with a view to obtaining an undue advantage for oneself or for others*”.

1 Active/passive manipulation

In the legislation reviewed, countries predominantly identified both the active and passive manipulation of a sport event as the objective elements of the match-fixing offence. This dual approach is recommended as a good practice.

2 Manipulation for material/non-material gain

With a few exceptions, the national legislation included the concept of any undue advantage resulting from the match-fixing offence, be it material (“gift”, “present”, “consideration”, “allotment”, “material/pecuniary/financial advantage”) or non-material. This approach is recommended as a good practice as it conforms with articles 15 and 16 of the Convention against Corruption and with article 3.4 of the Macolin Convention, which both refer to “*undue advantage*”.

3 Manipulation of overall result/partial event

The analysis undertaken for this booklet showed that many States sanctioned only the alteration of the final result of a game or competition, but not its intermediary (partial) events or components. However, there are substantial risks associated with the manipulation of outcomes/events (e.g. the number of red cards or goals scored etc.) during the competition itself. This is based on the presupposition that some types of bets, including bets on intermediary (partial) events, are attractive to criminal organizations. These bets can offer opportunities to such groups to place large bets with high pay out potential, but with a low risk of any manipulation being detected. Indeed, article 3.4 Macolin Convention refers both to the result and the course of a sports event or competition. It is recommended to criminalize the manipulation of both the result or of the course of a sports competition.

C Participants

1 Direct participants

Most of the legislation analysed referred in general terms to direct participants to the match-fixing offence. At an international level, articles 15, 16 and 21 of the Convention against Corruption refer in broad terms to direct participants. Depending on the applicable offence, these persons act as briber-givers and briber-takers, both in the public and in the private sector. The Macolin Convention, in its article 3, refers in broad terms to the active perpetrators (corruptor/bribe-giver) but distinguishes between different categories of passive perpetrators (bribe-takers), referred to as “competition stakeholders”: 1) athletes; 2) athlete support personnel; and 3) officials.⁴⁰

For the purpose of effectiveness, it is recommended that broad terms be used to define active and passive participants in the match-fixing offence e.g. “Any person” who promises or gives an undue advantage, directly or through intermediaries and “Any person” who receives or accepts an undue advantage or the promise thereof, directly or through intermediaries, in order to manipulate a sport event.

2 Intermediaries

In view of the far-reaching nature of match-fixing – which can be viewed as a form of organized crime involving several persons and mobilizing significant human and material resources – establishing the criminal liability of intermediaries’ involved in the match-fixing offence is recommended as a good practice.

This recommendation is in line with the obligation set forth in article 5 of the Convention against Transnational Organized Crime which requires the criminalization of participation in an organized criminal group, including for intermediaries. It is also consistent with article 27 of the Convention against Corruption, which clarifies that participation in any capacity such as an accomplice, assistant or instigator to a corruption offence is also criminal. Finally, this recommendation is also in line with article 17 Macolin Convention providing for aiding and abetting.

3 Liability of legal persons

The legislation reviewed as part of this booklet provided for the liability of legal persons, which, subject to the legal principles of each country, may be criminal, civil or administrative in nature. This is outlined in article 26 of the Convention against Corruption which states that, “*each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention*”. Article 18 of the Macolin Convention also recommends establishing liability for legal persons found guilty of match-fixing.

It is therefore recommended that this element be specified in legal systems recognizing the existence of this form of liability.⁴¹

⁴⁰ In Art. 3 Macolin Convention, “athlete” means any person or group of persons, participating in sports competitions; “athlete support personnel” means any coach, trainer, manager, agent, team staff, team official, medical or paramedical personnel working with or treating athletes participating in or preparing for sports competitions, and all other persons working with the athletes; “official” means any person who is the owner of, a shareholder in, an executive or a staff member of the entities which organize and promote sports competitions, as well as referees, jury members and any other accredited persons. The term also covers the executives and staff of the international sports organization, or where appropriate, other competent sports organization which recognizes the competition.

4 Protection of certain categories of persons

In conformity with articles 32 and 33 of the Convention against Corruption and article 21 of Macolin Convention, in the context of match-fixing as well as for wider considerations, it is recommended that the protection of witnesses and of reporting persons be legislated for in accordance with the legal principles recognized of each jurisdiction.

D Distinguishing between match-fixing and bet-fixing

In most of the States reviewed, the specific match-fixing offence is *dissociated* from the act of betting on a sport event or competition which is fixed. In two cases (Germany and South Africa), match-fixing and bet-fixing are criminalized in two different but interconnected offences. In other cases (Bulgaria, Greece, Italy, Portugal, Spain and Turkey), bet-fixing is considered to be an aggravating factor for the match-fixing offence. In six jurisdictions, however (Australia, France, Korea, New Zealand, Switzerland and the United Kingdom), the scope of the match-fixing offence is limited to competitions on which bets are offered.

In order to ensure the highest efficiency possible in the fight against match-fixing, and for consistency with the objectives of the Convention against Corruption and of the Macolin Convention, it is recommended that the match-fixing offence be independent from betting on a sports event or competition which is fixed.

This recommendation does not preclude national lawmakers from adapting the match-fixing offence to include bet-fixing (i.e. to criminalize all match-fixing forms but in *particular* those aimed at altering the result of a bet)⁴² or to provide for a separate offence related to cheating at betting.

⁴¹ Indeed, we recall that not all countries provide criminal liability for legal entities. See the Council of Europe comparative Study on the *Liability of Legal Persons for Corruption Offences*, which is available at: www.coe.int/t/dghl/cooperation/economiccrime/corruption/Publications/EaP/Liability%20of%20Legal%20Persons%20for%20Corruption%20Offences.pdf; see also a recent Report by the OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia*, 2015, available at: www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf

⁴² In this case, fixing a sports competition for betting purposes could be an aggravating factor.

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Model Criminal Law Provisions

Using the analysis conducted of legislation related to match-fixing and based on the relevant legal and disciplinary instruments outlined in section 4 of this booklet, the following model criminal law provisions are proposed for consideration:

1. Any person who, directly or indirectly, promises, offers or gives any undue advantage to another person, for himself, herself or for others, with the aim of improperly altering the result or the course of a sports competition, shall be punished by _____
2. Any person who, directly or indirectly, solicits or accepts any undue advantage or the promise or the offer thereof, for himself, herself or for others, with the aim of improperly altering the result or the course of a sports competition, shall be punished by _____

Explanatory Text

| Proposed text | Specific comments and references to the relevant international instruments |
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| <i>“Any person who ... promises / offers / gives” (para. 1)</i> | This formulation (relating to active corruption) is the widest possible. In conformity with Art. 15 and 16 of the Convention against Corruption. |
| <i>“Any person who ... solicits / accepts” (para. 2)</i> | This is a broad formulation (relating to passive corruption) which ensures maximum flexibility for interpretation. In conformity with Art. 15 and 16 of the Convention against Corruption. |
| <i>“Directly or indirectly”</i> | This provision covers both direct and indirect acts and omissions. In conformity with terminology contained in Art. 15 and 16 of Convention against Corruption: “directly or indirectly”. Also in conformity with the Macolin Convention. |
| <i>“Promises / offers / gives”</i> | In conformity with terminology contained in Art. 15 and 16 of Convention against Corruption. |
| <i>“Solicits / accepts”</i> | In conformity with terminology contained in Art. 15 and 16 of Convention against Corruption. |
| <i>“Any undue advantage or the promise or the offering thereof”</i> | In conformity with terminology contained in Art. 15 and 16 of Convention against Corruption “undue advantage” and with Art. 3.4 Macolin Convention: “undue advantage”. National legislation examined use varied terminology such as “gift”, “present”, “consideration”, “allotment” or confined this only to “material advantage”, “pecuniary advantage” or “financial advantage”. Using the unified international terminology seems the most appropriate solution. This formulation includes non-material advantages (such as advancing to a higher level in the competition, or simply the “glory” of winning). In conformity with the Macolin Convention. |
| <i>“With the aim of improperly altering”</i> | Art. 3.4 Macolin Convention: “aimed at an improper alteration”. Given the particular nature of this crime (relating precisely to sports competitions), the specific terminology of the Macolin Convention seems well adapted. The formulation “with the aim of” covers both attempt and completed offences. |
| <i>“The result or the course of a sports competition”</i> | Art. 3.4 Macolin Convention: “[alteration] of the result or the course of a sports competition”. Considering the practice of betting on partial events (e.g. the number of red or yellow cards, the number of free kicks or of penalties, etc.). It is recommended that the offence concern not only the result of the sports competition, but also the normal and fair course of that competition. |
| <i>“For himself, herself or for others”</i> | This phrase is constructed to cover all the potential beneficiaries of the undue advantage, who may be the perpetrators themselves or other persons. In conformity with Art. 3.4 Macolin Convention: “[with a view to obtaining an undue advantage] for oneself or for others”. In conformity with terminology contained in Art. 15 and 16 of Convention against Corruption: “[undue advantage], for the official himself or herself or another person or entity”. |